

# Greenberg Traurig

December 20, 2006

John E. James, Esquire  
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**Re:** *Magten Asset Management Corp. and Law Debenture Trust Co. v. NorthWestern Corp.; C.A. No. 04-1494-JJF;*  
*Magten Asset Management Corp. v. Mike J. Hanson and Ernie J. Kindt; C.A. No. 05-0499-JJF; and*  
*Magten Asset Management Corp. v. Paul Hastings Janofsky & Walker, LLP C.A. No. 04-1256-JJF.*

Dear Mr. James:

This firm, together with Curtis, Mallet-Prevost, Colt & Mosle LLP, is counsel to the defendant NorthWestern Corp. We are in receipt of Ms. Dubé's letter to you of December 19 regarding the motion of plaintiffs Magten Asset Management ("Magten") and Law Debenture Trust Company of New York pursuant to Rule 37 of the Fed. R. Civ. P to compel discovery in the above-referenced actions which have been consolidated for pretrial purposes. We are also in receipt of Ms. Dubé's letter to Judge Farnan regarding your appointment to our Special Master in these cases.

The confusion over your appointment as Special Master stems from the fact that Judge Farnan's Rule 16 Scheduling Order of November 3, 2006 makes no reference to the appointment of a Special Master and indeed states, in paragraph 3(g), that "Any discovery dispute shall be submitted to the Court . . .". While defendant NorthWestern has not objected to the appointment of a Special Master, we have noted the ambiguity in the Court's Order.

In any event, should it become clear that you will be handling discovery matters in the consolidated cases, we take issue with the suggestion of plaintiffs' counsel that there be a meeting with you to discuss this motion prior to any further briefing. The plaintiffs should not be permitted to unilaterally preempt the defendant's right under the Federal Rules to oppose this motion, which the defendant believes is without any merit, in writing. In fact, plaintiffs' counsel have agreed that defendants' response papers on the motion are not due until January 5, 2007 (rather than January 2) as a courtesy in light of the pending holiday season. Plaintiff's reply is due five days thereafter (Local Rule 7.1.2(a)(3)) and once the motion is fully briefed we welcome the opportunity to discuss the matter with you or Judge Farnan. Thank you for your consideration.

Respectfully submitted,

Victoria W. Counihan (No. 3488)

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